

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

ENERGIZER BRANDS, LLC

Plaintiff,

v.

EVERLAST WORLD'S BOXING
HEADQUARTERS CORPORATION

Serve registered agent:
Corporation Service Company
80 State Street
Albany, New York 12207-2543

and

EVERLAST WORLDWIDE, INC.

Serve registered agent:
Corporation Service Company
2711 Centerville Rd., Suite 400
Wilmington, Delaware 19808

Defendants.

Cause No. _____

Division No. _____

JURY TRIAL DEMANDED

PETITION

Plaintiff Energizer Brands, LLC ("Energizer"¹), hereby respectfully states the following for its Petition against Defendants Everlast World's Boxing Headquarters Corporation and Everlast Worldwide, Inc., (collectively, defendants are referred to as "Everlast" unless otherwise indicated):

¹ "Energizer" refers to Plaintiff Energizer Brands, LLC and its predecessors-in-interest.

Exhibit 1

Nature of the Action

1. This is an action for breach of contract arising out of an agreement entered into between Eveready Battery Company, Inc., which was a predecessor in interest to Energizer, and Everlast in April, 2005. The agreement arose out of a lawsuit between the parties that was previously pending in the United States District Court for the Eastern District of Missouri captioned *Eveready Battery Company, Inc. v. Everlast Worldwide, Inc. and Everlast World's Boxing Headquarters Corporation*, Case No. 04-cv-00969-ERW (the "Trademark Action").

2. Energizer owns the extremely well-known, famous, and iconic EVEREADY® trademark. Over the past century, the EVEREADY® family of marks have become distinctive symbols of excellence and innovation uniquely associated with ENERGIZER® brand batteries and flashlights.

3. In the earlier Trademark Action, Energizer sued Everlast for, *inter alia*, trademark infringement and dilution of its EVEREADY® marks as a result of Everlast's use of EVERLAST on and in connection with batteries and flashlights.

4. Energizer and Everlast ultimately resolved the Trademark Action, which resolution was memorialized in a written settlement agreement entered into on or about April 13, 2005 (the "Agreement").²

5. As detailed further herein, notwithstanding Energizer's full and complete performance under the Agreement including, but not limited to, Energizer's dismissal of

² The Agreement was between Energizer's predecessor, Eveready Battery Company, Inc., on the one hand, and Defendants Everlast Worldwide, Inc. and Everlast World's Boxing Headquarters Corporation, on the other hand.

the Trademark Action, Energizer recently discovered that Everlast has violated material provisions of the Agreement necessitating this lawsuit.

The Parties

6. Plaintiff Energizer Brands, LLC, is a Delaware limited liability company with a principal place of business at 533 Maryville University Drive, St. Louis, Missouri, 63141. The sole member of Energizer Brands, LLC is a citizen of the state of Delaware and a citizen of the state of Missouri.

7. Defendant Everlast World's Boxing Headquarters Corporation is a New York corporation with its principal place of business at 42 West 39th Street, 3rd Floor, New York, New York 10018.

8. Defendant Everlast Worldwide, Inc., is a Delaware corporation with its principal place of business at 42 West 39th Street, 3rd Floor, New York, New York 10018.

Jurisdiction and Venue

9. This Court has jurisdiction over the claims against Everlast pursuant to Section 478.070 R.S.Mo.

10. This Court has personal jurisdiction over the parties pursuant to Section 506.500 R.S.Mo. because Everlast entered into the Agreement with Energizer's predecessor-in-interest, Eveready Battery Company, Inc., in Missouri. Additionally, the Agreement is governed and construed by the laws of the State of Missouri, arises out of litigation in the State of Missouri, was negotiated and executed, at least in part, in the State of Missouri, and Everlast's breaches and the resulting harm directly impact and are felt in the State of Missouri, where Energizer is located. Further, on information and

belief, Everlast regularly transacts and conducts substantial business within the State of Missouri, and has otherwise made or established contacts within this State sufficient to permit the exercise of personal jurisdiction. Among other things, Everlast produces, distributes, offers for sale, and sells a broad range of goods throughout the United States, directly and through nationwide wholesalers and retailers, including, but not limited to, through distribution and retail stores located within this State and County. Everlast also owns and/or operates a manufacturing facility within this State, in Moberly, Missouri.

11. Venue is proper in this Court pursuant to Section 508.010 R.S.Mo. because Energizer's principal place of business is in St. Louis, Missouri.

Facts Common to All Counts



A. The Famous EVEREADY® Trademarks.

12. For nearly a century, Energizer and its predecessors-in-interest have manufactured, marketed, advertised, distributed, offered for sale, and sold batteries and flashlights under and in connection with the EVEREADY® mark in the United States and throughout the world. Indeed, Energizer, through its predecessors, marketed the very first battery for consumer use in 1896.

13. Since at least as early as the 1920's, Energizer has owned, continuously used, and presently uses, a variety of trademarks consisting of the inherently distinctive designation EVEREADY®, and/or incorporating the designation EVEREADY together with other word and/or design elements (collectively, the "EVEREADY® Marks") in interstate commerce throughout the United States on and in connection with the design, manufacture, advertising, marketing, promotion, distribution, offer for sale, and sale of its

goods and services. Today, Energizer markets and sells batteries and flashlights in more than 100 countries around the world.

14. Energizer owns and maintains numerous registrations of the EVEREADY® Marks on the Principal Register of the United States Patent and Trademark Office (the “USPTO”), together with all right, title, and interest in, to, and under the marks shown therein, and all of the business and goodwill represented thereby (collectively, the “EVEREADY® Registrations”). The following are examples of EVEREADY® Registrations that have become incontestable and are conclusive evidence of Energizer’s rights in and to the marks covered by those registrations under Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b):

Trademark	Reg. No.	Reg. Date	Goods (First Use in Commerce)
EVEREADY®	3176936	Nov. 28, 2006	Batteries (March 23, 1929)
EVEREADY®	1032879	Feb. 10, 1976	Electric battery chargers (Jan. 1, 1965)
EVEREADY®	1944281	Dec. 26, 1995	Battery-powered lights, namely penlights, flashlights, disposable squeeze lights, lanterns (1988)
EVEREADY®	1944297	Dec. 26, 1995	Batteries, namely, carbon-zinc batteries, alkaline batteries, rechargeable batteries, battery chargers (1987)
EVEREADY® 	1495668	July 12, 1988	Batteries (Oct. 1, 1987)
EVEREADY® 	1563236	Oct. 31, 1989	Flashlights (Dec. 20, 1988)
EVEREADY SUPER HEAVY DUTY®	1925149	Oct. 10, 1995	Batteries (1993)

EVEREADY GOLD®	2743471	July 29, 2003	Batteries (Apr. 25, 2002)
-------------------	---------	---------------	---------------------------

Copies of U.S. Certificates of Registration for these EVEREADY® Marks are attached collectively as **Exhibit 1**.

15. The following are additional examples of EVEREADY® Registrations owned by Energizer:

Trademark	Reg. No.	App. Date	Reg. Date	Goods (First Use in Commerce)
EVEREADY RECHARGEABLE®	3884320	Feb. 18, 2010	Nov. 30, 2010	Batteries and battery chargers (Apr. 19, 2010)
EVEREADY FOR LIFE®	4713436	Nov. 6, 2013	March 31, 2015	Batteries; battery chargers (July 25, 2013)

Copies of U.S. Certificates of Registration for these EVEREADY® Marks are attached collectively as **Exhibit 2**.

16. Energizer also owns and maintains numerous registrations of the EVEREADY® Marks around the world, including, but not limited to, in each of the jurisdictions referenced in Paragraphs 22 through 35 below.

17. Over the past century, Energizer has devoted enormous resources to the marketing, advertising, and promotion of its EVEREADY® brand batters and flashlights.

18. As a result of Energizer's long and continuous use of the EVEREADY® Marks on and in connection with its products and services, and as a consequence of Energizer's extensive advertising, promotion, distribution, offer for sale, and sale of such products under its EVEREADY® Marks, the consuming public and the trade have come to recognize, and do recognize, Energizer as the source of origin of EVEREADY® brand

batteries and flashlights. Further, the EVEREADY® Marks are strongly recognized by the consuming public and the trade as being used by Energizer or by a single source, and the consuming public and the trade associate and identify the batteries and flashlights offered and sold under the EVEREADY® Marks with Energizer or with a single source. Energizer consequently derives invaluable goodwill from this recognition, association, and identification by the consuming public and the trade.

19. Because of the high degree of inherent and acquired distinctiveness of the EVEREADY® Marks, the length of time and extent to which Energizer has used the EVEREADY® Marks, the vast advertising and publicity of which the EVEREADY® Marks have been the subject, the substantial trading area in which the EVEREADY® Marks have been and are used, and the high degree of consumer recognition of the EVEREADY® Marks, the designation EVEREADY® is a well-known and famous trademark widely recognized by the general consuming public of the United States as a designation of source of Energizer's batteries and flashlights deserving of a broad scope of legal protection.

B. The Parties' Agreement and Everlast's Breaches.

20. On or about July 29, 2004, Energizer initiated the Trademark Action seeking, among other things, injunctive relief, damages, costs, and attorneys' fees for Everlast's infringement of Energizer's trademark and related rights in and to its long established EVEREADY® Marks.

21. To resolve the parties' dispute and settle the Trademark Action, the parties entered into the Agreement on or about April 13, 2005. While the specific terms of the Agreement are subject to a confidentiality provision, the Agreement generally restricts

Everlast's ability to use, and/or apply to register, EVERLAST for use on or in connection with batteries, flashlights, or any related products.

22. Despite the Agreement, on or about December 1, 2015, Everlast filed an application to register the following mark for, *inter alia*, batteries with the Canadian Intellectual Property Office:



23. The application was assigned Canadian Application Serial No. 1757209, and identifies the following goods, among others:

“... apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; ... batteries and chargers; ... cell phone accessories, namely, chargers, cables . . .”

24. Everlast's December 2015 Canadian application violates and is a material breach of the Agreement.

25. Upon the recent discovery of Everlast's December 2015 Canadian application, Energizer conducted further investigation into Everlast's activities.

26. On or about January 30, 2013, Everlast filed an application to register EVERLAST for, *inter alia*, batteries with the trademark office of the European Union. The application was assigned CTM Filing No. 011531878, registered on July 4, 2013, and identifies the following goods, among others:

“Batteries; battery chargers; battery cases; battery boxes; battery packs; rechargeable batteries; battery adapters; dry batteries; galvanic batteries; electrical

and electronic batteries; solar batteries; lithium ion batteries; parts, accessories and fittings for all the aforesaid goods.”

27. Everlast’s January 2013 European Union application violates and is a material breach of the Agreement.

28. On or about November 26, 2012, Everlast filed an application to register the following mark with the trademark office of the European Union:



The application was assigned CTM Filing No. 013503701, registered on November 26, 2014, and identifies the following goods, among others:

“... apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; ... batteries and chargers; ... parts and fittings for all the aforesaid goods”

29. Everlast’s November 2012 European Union application violates and is a material breach of the Agreement.

30. On or about July 20, 2015, Everlast filed an application to register the following mark with the trademark office of Costa Rica:



The application was assigned Application No. 2015-0006860, and identifies the following goods, among others:

“...apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; ... batteries and chargers; ... parts and fittings for all the aforesaid goods”

31. Everlast’s July 2015 Costa Rica application violates and is a material breach of the Agreement.

32. On or about July 13, 2015, Everlast filed an application to register the following mark with the trademark office of El Salvador:



The application was assigned Application No. 20150219910, and identifies the following goods, among others:

“...apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; ... batteries and chargers, including cell phone chargers, and chargers for computers; ... parts and accessories for all the above items”

33. Everlast’s July 2015 El Salvador application violates and is a material breach of the Agreement.

34. On or about July 14, 2015, Everlast filed an application to register the following mark with the trademark office of Panama:



The application was assigned Application No. 242522, and identifies the following goods, among others:

“...apparatus and instruments for, switching, transforming, accumulating, regulating or controlling electricity; ... batteries and chargers; ... parts and fittings for all the aforesaid goods”

35. Everlast’s July 2015 Panama application violates and is a material breach of the Agreement.

36. On information and belief, Everlast has committed other material breaches of the Agreement.

37. Energizer has materially complied with and performed all of its obligations under the Agreement.

COUNT I - BREACH OF CONTRACT

38. Energizer realleges and incorporates paragraphs 1 through 37 of its Complaint as if fully set forth and restated herein.

39. The Agreement is a valid and enforceable contract that the parties freely and knowingly entered into.

40. Energizer performed, or, alternatively, substantially performed, all of its obligations under the Agreement.

41. Everlast has materially breached the Agreement by, among other things, using, registering and/or seeking to register EVERLAST and/or EVERLAST & design on

or in connection with batteries and related products in numerous jurisdictions throughout the world including, but not limited to, the specific instances identified in paragraphs 22 through 35 above.

42. As a result of Everlast's material breaches of the Agreement, Energizer has been damaged, and will continue to be damaged, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Energizer prays the Court enter judgment in its favor and award Energizer relief as follows:

- A. That Energizer recover all damages it has sustained as a result of Everlast's breaches of the Agreement including, but not limited to, harm to Energizer's reputation and goodwill, and dilution of the distinctive character of the EVEREADY® Marks;
- B. That Energizer recover all profits that Everlast has wrongfully obtained as a result of Everlast's breaches of the Agreement;
- C. That an accounting be directed to determine Everlast's profits resulting from its breaches of the Agreement, and that such profits be paid to Energizer;
- D. That Energizer recover its costs, attorneys' fees, prejudgment and post-judgment interest as provided by law;
- E. That judgment be entered against Everlast in an amount in excess of \$25,000, plus interest at the legal rate;
- F. Requiring Everlast to specifically perform under the Agreement by, among other things, ceasing all use, registrations, and applications to register

EVERLAST, or any other words or designs addressed by the Agreement, on or in connection with batteries, flashlights, and related products, and expressly abandoning and/or canceling all registrations and applications for registration that violate the Agreement; and

G. That Energizer recover such other relief as the Court deems just and proper.

Respectfully submitted, this 7th day of March, 2016.

BRYAN CAVE LLP

/s/ Herbert R. Giorgio Jr.

David A. Roodman, Missouri Bar #38109
Herbert R. Giorgio Jr., Missouri Bar #58524
Matthew G. Minder, Missouri Bar #61686
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750
(314) 259-2417 (telephone)
(314) 552-8417 (facsimile)
daroodman@bryancave.com
herb.giorgio@bryancave.com
matt.minder@bryancave.com

*Attorneys for Plaintiff Energizer Brands,
LLC*

EXHIBIT 1

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 3,176,936

Registered Nov. 28, 2006

**TRADEMARK
PRINCIPAL REGISTER**

EVEREADY

EVEREADY BATTERY COMPANY, INC. (DELA-
WARE CORPORATION)
533 MARYVILLE UNIVERSITY DRIVE
ST. LOUIS, MO 63141

FOR: BATTERIES, IN CLASS 9 (U.S. CLS. 21, 23, 26,
36 AND 38).

FIRST USE 3-23-1929; IN COMMERCE 3-23-1929.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 796,721, 1,944,297 AND
OTHERS.

SER. NO. 78-788,598, FILED 1-10-2006.

DAVID C. REIHNER, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cl.: 21

United States Patent Office

Reg. No. 1,032,879
Registered Feb. 10, 1976

TRADEMARK

Principal Register

EVEREADY

Union Carbide Corporation (New York corporation)
270 Park Ave.
New York, N.Y. 10017

For: ELECTRIC BATTERY CHARGERS, in CLASS
9 (U.S. CL. 21).

First use on or about Jan. 1, 1965; in commerce on or
about Jan. 1, 1965.

Owner of Reg. Nos. 135,757, and 796,721.

Ser. No. 58,154, filed July 18, 1975.

CHARLES R. FOWLER, Supervisory Examiner
RICHARD A. STRASER, Examiner

Int. Cl.: 11

Prior U.S. Cls.: 13, 21, 23, 31 and 34

United States Patent and Trademark Office **Reg. No. 1,944,281**
Registered Dec. 26, 1995

**TRADEMARK
PRINCIPAL REGISTER**

EVEREADY

EVEREADY BATTERY COMPANY, INC.
(DELAWARE CORPORATION)
CHECKERBOARD SQUARE
ST. LOUIS, MO 63164

FOR: BATTERY-POWERED LIGHTS,
NAMELY PENLIGHTS, FLASHLIGHTS, DIS-
POSABLE SQUEEZE LIGHTS, LANTERNS,
FLUORESCENT LIGHTS; BULBS FOR BAT-

TERY-POWERED LIGHTS, IN CLASS 11 (U.S.
CLS. 13, 21, 23, 31 AND 34).

FIRST USE 0-0-1988; IN COMMERCE
0-0-1988.

OWNER OF U.S. REG. NOS. 1,495,668, 1,563,236
AND OTHERS.

SER. NO. 74-635,303, FILED 2-17-1995.

J. C. DEMOS, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office Reg. No. 1,944,297
Registered Dec. 26, 1995

**TRADEMARK
PRINCIPAL REGISTER**

EVEREADY

EVEREADY BATTERY COMPANY, INC.
(DELAWARE CORPORATION)
CHECKERBOARD SQUARE
ST. LOUIS, MO 63164

FOR: BATTERIES, NAMELY CARBON-ZINC
BATTERIES, ALKALINE BATTERIES, PHOTOELECTRONIC BATTERIES, RECHARGEABLE BATTERIES, HEARING-AID BATTERIES, BATTERY CHARGERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1987; IN COMMERCE
0-0-1987.

OWNER OF U.S. REG. NOS. 135,757, 1,495,668,
AND 1,563,263.

SER. NO. 74-636,027, FILED 2-17-1995.

DAVID NICHOLSON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cl.: 21

United States Patent and Trademark Office **Reg. No. 1,495,668**
Registered July 12, 1988

**TRADEMARK
PRINCIPAL REGISTER**



EVEREADY BATTERY COMPANY, INC.
(DELAWARE CORPORATION)
CHECKERBOARD SQUARE
ST. LOUIS, MO 63164

OWNER OF U.S. REG. NOS. 135,757, 707,745
AND OTHERS.

SER. NO. 692,541, FILED 10-29-1987.

FOR: BATTERIES, IN CLASS 9 (U.S. CL. 21).
FIRST USE 10-1-1987; IN COMMERCE
10-1-1987.

JODY HALLER DRAKE, EXAMINING ATTOR-
NEY

Int. Cl.: 11

Prior U.S. Cl.: 21

United States Patent and Trademark Office **Reg. No. 1,563,236**
Registered Oct. 31, 1989

**TRADEMARK
PRINCIPAL REGISTER**



EVEREADY BATTERY COMPANY, INC.
(DELAWARE CORPORATION)
CHECKERBOARD SQUARE
ST. LOUIS, MO 63164

FOR: FLASHLIGHTS, IN CLASS 11 (U.S. CL.
21).

FIRST USE 12-20-1988; IN COMMERCE
12-20-1988.

OWNER OF U.S. REG. NO. 1,495,668.

SER. NO. 783,017, FILED 2-27-1989.

ABRAM I. SACHS, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cl.: 21

United States Patent and Trademark Office **Reg. No. 1,925,149**
Registered Oct. 10, 1995

TRADEMARK
PRINCIPAL REGISTER

EVEREADY SUPER HEAVY DUTY

EVEREADY BATTERY COMPANY, INC.
(DELAWARE CORPORATION)
CHECKERBOARD SQUARE
ST. LOUIS, MO 63164

FOR: BATTERIES, IN CLASS 9 (U.S. CL. 21).
FIRST USE 0-0-1993; IN COMMERCE
0-0-1993.

OWNER OF U.S. REG. NOS. 707,745, 1,563,236
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SUPER HEAVY DUTY",
APART FROM THE MARK AS SHOWN.

SER. NO. 74-512,195, FILED 4-11-1994.

WON TEAK OH, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cl.: 21

United States Patent and Trademark Office Reg. No. 1,925,149
Registered Oct. 10, 1995

**TRADEMARK
PRINCIPAL REGISTER**

EVEREADY SUPER HEAVY DUTY

EVEREADY BATTERY COMPANY, INC.
(DELAWARE CORPORATION)
CHECKERBOARD SQUARE
ST. LOUIS, MO 63164

FOR: BATTERIES, IN CLASS 9 (U.S. CL. 21).
FIRST USE 0-0-1993; IN COMMERCE
0-0-1993.

OWNER OF U.S. REG. NOS. 707,745, 1,563,236
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SUPER HEAVY DUTY"
APART FROM THE MARK AS SHOWN.

SER. NO. 74-512,195, FILED 4-11-1994.

WON TEAK OH, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,743,471

United States Patent and Trademark Office

Registered July 29, 2003

**TRADEMARK
PRINCIPAL REGISTER**

EVEREADY GOLD

EVEREADY BATTERY COMPANY, INC. (DELA-
WARE CORPORATION)
533 MARYVILLE UNIVERSITY DR
ST. LOUIS, MO 63141

OWNER OF U.S. REG. NOS. 796,721, 1,944,281,
AND OTHERS.

FOR: BATTERIES, IN CLASS 9 (U.S. CLS. 21, 23, 26,
36 AND 38).

SN 76-234,890, FILED 4-3-2001.

FIRST USE 4-25-2002; IN COMMERCE 4-25-2002.

ELIZABETH J. WINTER, EXAMINING ATTORNEY

EXHIBIT 2

United States of America

United States Patent and Trademark Office

EVEREADY RECHARGEABLE

Reg. No. 3,884,320

Registered Nov. 30, 2010

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

EVEREADY BATTERY COMPANY, INC. (DELAWARE CORPORATION)
533 MARYVILLE UNIVERSITY DRIVE
ST. LOUIS, MO 63141

FOR: BATTERIES AND BATTERY CHARGERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-19-2010; IN COMMERCE 4-19-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,944,281, 3,176,936, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RECHARGEABLE", APART FROM THE MARK AS SHOWN.

SN 77-938,962, FILED 2-18-2010.

GINA FINK, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

EVEREADY FOR LIFE

Reg. No. 4,713,436

Registered Mar. 31, 2015

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

EVEREADY BATTERY COMPANY, INC. (DELAWARE CORPORATION)
533 MARYVILLE UNIVERSITY DRIVE
ST. LOUIS, MO 63141

FOR: BATTERIES; BATTERY CHARGERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 7-25-2013; IN COMMERCE 7-25-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,944,281, 3,176,936, AND OTHERS.

SN 86-111,881, FILED 11-6-2013.

THEODORE MCBRIDE, EXAMINING ATTORNEY



Nichelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

Local Rule 28. SPECIAL PROCESS SERVERS

(1) Any Judge may appoint a Special Process Server in writing in accordance with the law and at the risk and expense of the requesting party except no special process server shall be appointed to serve a garnishment.

This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

(2) The Circuit Clerk may appoint a natural person other than the Sheriff to serve process in any cause in accordance with this subsection;

(A) Appointments may list more than one server as alternates.

(B) The appointment of a person other than the Sheriff to serve process shall be made at the risk and expense of the requesting party.

(C) Any person of lawful age, other than the Sheriff, appointed to serve process shall be a natural person and not a corporation or other business association.

(D) No person, other than the Sheriff, shall be appointed to serve any order, writ or other process which requires any levy, seizure, sequestration, garnishment, or other taking.

(E) Requests for appointment of a person other than the Sheriff to serve process shall be made on a "Request for Appointment of Process Server" electronic form, which may be found on the Court's Web Site, <http://www.stlouisco.com>. (LawandPublicSafety/Circuit/Forms).

(F) This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVICE RETURN

Any service by the St. Louis County Sheriff's Office shall be scanned into the courts case management system. Any service by another Sheriff or a Special Process Server or any other person authorized to serve process shall return to the attorney or party who sought service and the attorney shall file the return electronically to the Circuit Clerk.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOHN D WARNER JR	Case Number: 16SL-CC00862
Plaintiff/Petitioner: ENERGIZER BRANDS, LLC	Plaintiff's/Petitioner's Attorney/Address: HERBERT RICHARD GIORGIO JR 211 NORTH BROADWAY SUITE 3600 ST LOUIS, MO 63102
Defendant/Respondent: EVERLAST WORLD'S BOXING HEADQUARTERS CORPORATION	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Breach of Contract	(Date File Stamp)

Summons for Personal Service Outside the State of Missouri (Except Attachment Action)

The State of Missouri to: EVERLAST WORLD'S BOXING HEADQUARTERS CORPORATION

Alias:

SERVE: CORPORATION SERVICE
COMPANY80 STATE STREET
ALBANY, NY 12207-2543

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

08-MAR-2016

Date

Further Information:
ALD

Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other (describe) _____ (address)

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons.
(use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The office making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the "neutral," who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOHN D WARNER JR	Case Number: 16SL-CC00862
Plaintiff/Petitioner: ENERGIZER BRANDS, LLC	Plaintiff's/Petitioner's Attorney/Address: HERBERT RICHARD GIORGIO JR 211 NORTH BROADWAY SUITE 3600 ST LOUIS, MO 63102
Defendant/Respondent: EVERLAST WORLD'S BOXING HEADQUARTERS CORPORATION	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Breach of Contract	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: EVERLAST WORLDWIDE, INC.

Alias:

SERVE: CORPORATION SERVICE
COMPANY2711 CENTERVILLE RD
SUITE 400
WILMINGTON, DE 19808

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

08-MAR-2016

Date

Further Information:

ALD

Clerk
Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other (describe) _____

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons.
(use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The office making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the "neutral," who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOHN D WARNER JR	Case Number: 16SL-CC00862
Plaintiff/Petitioner: ENERGIZER BRANDS, LLC	Plaintiff's/Petitioner's Attorney/Address: HERBERT RICHARD GIORGIO JR 211 NORTH BROADWAY SUITE 3600 ST LOUIS, MO 63102
Defendant/Respondent: EVERLAST WORLD'S BOXING HEADQUARTERS CORPORATION	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Breach of Contract	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: **EVERLAST WORLDWIDE, INC.**
Alias:

SERVE: CORPORATION SERVICE
COMPANY

2711 CENTERVILLE RD
SUITE 400
WILMINGTON, DE 19808

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

08-MAR-2016

Date

Further Information:
ALD

[Signature]
Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is **PROCESS SERVER** of **NEW CASTLE** County, **DE** (state).
- I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to **LYNANNE GARES** (name) **MANAGING AGENT** (title).

☐ other (describe)

Served at **CORPORATION SERVICE COMPANY, 2711 CENTERVILLE ROAD** (address)
in **NEW CASTLE** County, **DE** (state), on **3/8/16** (date) at **12:30pm** (time).

KEVIN S. DUNN
Printed Name of Sheriff or Server

[Signature]
Signature of Sheriff or Server

Subscribed and Sworn To me before this **9th** (day) **MARCH** (month) **2016** (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☒ authorized to administer oaths in the state in which the affiant served the above summons.
(use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

MELISSA HARMON
(Seal)
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires 12/16/2019

[Signature]
Signature and Title

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

AFFIDAVIT OF SERVICE

State of Missouri

County of St. Louis

21st Judicial Circuit Court

Case Number: 16SL-CC00862

Plaintiff:

Energizer Brands, LLC

vs.

Defendant:

Everlast World's Boxing Headquarters Corporation

State of New York, County of Albany)ss.:

Received by THE SERVINATOR, INC. to be served on **Everlast World's Boxing Headquarters Corporation, C/O Corporation Service Company, 80 State Street, Albany, NY 12207.**

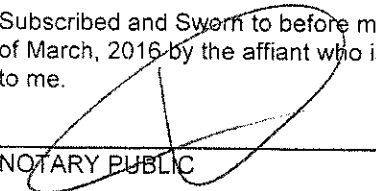
I, James Boland, being duly sworn, depose and say that on the **10th day of March, 2016 at 2:00 pm, I:**

Served the within named **CORPORATION** by delivering a true copy of the **Summons for Personal Service Outside the state of Missouri, Request for Appointment of Process Server and Petition** to Kevin Vohnoutka as Service Clerk of Corporation Service Company as **Registered Agent** of the within named corporation, in compliance with state statutes.

Description of Person Served: Age: 35, Sex: M, Race/Skin Color: White, Height: 5'10", Weight: 180, Hair: Brown, Glasses: Y

I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 14th day of March, 2016 by the affiant who is personally known to me.


NOTARY PUBLIC

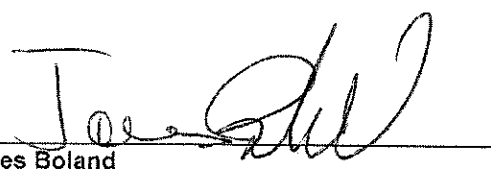
PATRICIA A. BURKE

NOTARY PUBLIC-STATE OF NEW YORK

No. 018U4922372

Qualified in Albany County *2018*

My Commission Expires February 28, _____


James Boland
Process Server

THE SERVINATOR, INC.

41 State Street

Suite M101

Albany, NY 12207

(518) 432-7378

Our Job Serial Number: 2016000840



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOHN D WARNER JR	Case Number: 16SL-CC00862
Plaintiff/Petitioner: ENERGIZER BRANDS, LLC	Plaintiff's/Petitioner's Attorney/Address: HERBERT RICHARD GIORGIO JR 211 NORTH BROADWAY SUITE 3600 ST LOUIS, MO 63102
Defendant/Respondent: EVERLAST WORLD'S BOXING HEADQUARTERS CORPORATION	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Breach of Contract	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: EVERLAST WORLDWIDE, INC.
Alias:

SERVE: CORPORATION SERVICE
COMPANY

2711 CENTERVILLE RD
SUITE 400
WILMINGTON, DE 19808

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

08-MAR-2016

Date

Further Information:
ALD

Janet P. Sherry
Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is PROCESS SERVER of NEW CASTLE County, DE (state).
- I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with
☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to
LYNANNE GARES (name) MANAGING AGENT (title).

☐ other (describe)

Served at CORPORATION SERVICE COMPANY, 2711 CENTERVILLE ROAD (address)
in NEW CASTLE County, DE (state), on 3/8/16 (date) at 12:30pm (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this 9th (day) MARCH (month) 2016 (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
☐ the judge of the court of which affiant is an officer.
☒ authorized to administer oaths in the state in which the affiant served the above summons.
(use for out-of-state officer)
☐ authorized to administer oaths. (use for court-appointed server)

MELISSA HARMON
(Seal) NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires 12/16/2019

Signature and Title

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOHN D WARNER JR	Case Number: 16SL-CC00862
Plaintiff/Petitioner: ENERGIZER BRANDS, LLC	Plaintiff's/Petitioner's Attorney/Address: HERBERT RICHARD GIORGIO JR 211 NORTH BROADWAY SUITE 3600 ST LOUIS, MO 63102
Defendant/Respondent: EVERLAST WORLD'S BOXING HEADQUARTERS CORPORATION	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Breach of Contract	(Date File Stamp)

Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)

The State of Missouri to: EVERLAST WORLDWIDE, INC.
Alias:

SERVE: CORPORATION SERVICE
COMPANY

2711 CENTERVILLE RD
SUITE 400
WILMINGTON, DE 19808

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

08-MAR-2016

Date

Further Information:

ALD

Janet P. Cherry
Clerk

Officer's or Server's Affidavit of Service

I certify that:

1. I am authorized to serve process in civil actions within the state or territory where the above summons was served.
2. My official title is PROCESS SERVER of NEW CASTLE County, DE (state).
3. I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to LYNANNE GARES (name) MANAGING AGENT (title).

☐ other (describe)

Served at CORPORATION SERVICE COMPANY, 2711 CENTERVILLE ROAD (address)
in NEW CASTLE County, DE (state), on 3/8/16 (date) at 12:30pm (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this 9th (day) MARCH (month) 2016 (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☒ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

MELISSA HARMON
(Seal) **NOTARY PUBLIC**
STATE OF DELAWARE
My Commission Expires 12/16/2019

Signature and Title

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.